

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRYAN J. SHOLLENBERGER,

Plaintiff,

v.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

CASE NO. C21-5102 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge. Dkt. 31. The Court having considered the R&R and the remaining record, and no objections having been filed, does hereby find and order as follows:

- (1) The R&R is **ADOPTED**;
- (2) Defendants’ motion for summary judgment, Dkt. 14, is **GRANTED**;
- (3) Plaintiff’s claims are **DISMISSED with prejudice**;

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(4) Plaintiff's *in forma pauperis* status is **REVOKED** for the purposes of appeal;¹ and

(5) The Clerk shall enter JUDGMENT and close this case.

Dated this 24th day of January, 2022.



BENJAMIN H. SETTLE
United States District Judge

¹ Although the R&R did not make a recommendation on whether Plaintiff's *in forma pauperis* ("IFP") status should continue for the purposes of appeal, the Court now here holds that Plaintiff's IFP status should be revoked.

IFP status on appeal shall not be granted if the district court certifies "before or after the notice of appeal is filed" "that the appeal is not taken in good faith[.]" *See* Fed. R. App. P. 24(a)(3)(A). "The good faith requirement is satisfied if the petitioner seeks review of any issue that is not frivolous." *Gardner v. Pogue*, 558 F.2d 548, 551 (9th Cir. 1977) (internal quotation omitted). Generally, an issue is not frivolous if it has an "arguable basis either in law or in fact." *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Because any appeal from this matter would be frivolous, IFP status will not be granted for purposes of appeal.